

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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ERVIN MIDDLETON.

Plaintiff,

V.

CCB CREDIT SERVICES, INC.,

Defendant.

Case No. 2:12-cv-02012-APG-VCF

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

(Dkt. No. 29)

Before the Court is Defendant CCB Credit Services, Inc.'s Motion for Summary Judgment. For the reasons discussed below, I grant the motion.

I. BACKGROUND

Plaintiff Ervin Middleton seeks \$3,000.00 for Defendant CCB Credit Services, Inc.’s alleged violations of the Fair Debt Collection Practices Act (“FDCPA”) and the Fair Credit Reporting Act (“FCRA”). (*See* Doc. # 1-1.) Defendant removed the action to federal court and now seeks summary judgment on the claims, arguing both that the FDCPA claim is barred by the applicable statute of limitations and that Plaintiff cannot state a claim under the FCRA. I agree. Because Plaintiff has failed to raise a genuine issue of material fact with respect to Defendant’s arguments, the motion is granted.

The following facts are undisputed. Defendant is a collection agency that received the referral of Plaintiff's \$428.79 credit card debt from the original creditor First Premier Bank.¹ (Dkt. # 24, Krech Decl. ¶¶ 3–5.) Defendant attempted to collect the debt from Plaintiff, but was unsuccessful. (*Id.* at ¶ 5.) Defendant then closed the account regarding Plaintiff's debt, returned the account to the original creditor, and ceased collection activity. (*Id.* at ¶ 5, Ex. B).

When First Premier Bank first referred the debt, Defendant conducted a “soft-pull” of Plaintiff’s credit—an inquiry into Plaintiff’s credit information that does not affect the credit

¹ Plaintiff also filed a complaint against First Premier Bank in this District. *Middleton v. First Premier Bank*, No. 2:13-cv-01344-MMD-GWF.

1 score—to verify information about the Plaintiff and to ensure the Plaintiff was not in bankruptcy.
 2 (*Id.* at ¶ 10, Ex. B.) Defendant did not, however, request or obtain a copy of Plaintiff's credit
 3 report—a “hard pull,” which would have an effect on Plaintiff's credit score. (*Id.* at ¶ 11.)
 4 Additionally, Defendant never furnished any information regarding Plaintiff's debt to the credit
 5 reporting agencies and never received notice from a credit reporting agency that Plaintiff was
 6 disputing any information on his credit report. (*Id.* at ¶¶ 12–13.)

7 **II. DISCUSSION**

8 **A. Legal Standard**

9 The purpose of summary judgment is to avoid unnecessary trials when there is no dispute
 10 as to the facts before the court. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471
 11 (9th Cir. 1994). Summary judgment is appropriate when “the pleadings, depositions, answers to
 12 interrogatories, and admissions on file, together with the affidavits, if any, show there is no
 13 genuine issue as to any material fact and that the movant is entitled to judgment as a matter of
 14 law.” *See Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)). An
 15 issue is “genuine” if there is a sufficient evidentiary basis on which a reasonable fact-finder could
 16 find for the nonmoving party and a dispute is “material” if it could affect the outcome of the suit
 17 under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). Where
 18 reasonable minds could differ on the material facts at issue, however, summary judgment is not
 19 appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995). In evaluating a
 20 summary judgment motion, a court views all facts and draws all inferences in the light most
 21 favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d
 22 1100, 1103 (9th Cir. 1986).

23 The moving party bears the burden of informing the court of the basis for its motion,
 24 together with evidence demonstrating the absence of any genuine issue of material fact. *Celotex*,
 25 477 U.S. at 323. Once the moving party satisfies Rule 56's requirements, the burden shifts to the
 26 party resisting the motion to “set forth specific facts showing that there is a genuine issue for
 27 trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may not rely on denials in the pleadings
 28 but must produce specific evidence, through affidavits or admissible discovery material, to show

1 that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and
 2 "must do more than simply show that there is some metaphysical doubt as to the material facts."
 3 *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted). "The mere
 4 existence of a scintilla of evidence in support of the plaintiff's position will be insufficient."
 5 *Anderson*, 477 U.S. at 252. The Court may consider only evidence which might be admissible at
 6 trial in ruling on a motion for summary judgment. Fed. R. Civ. P. 56(c).

7 **B. Analysis**

8 Defendant argues that summary judgment should be granted in its favor because any claim
 9 under the FDCPA would be barred by the applicable statute of limitations and Plaintiff cannot
 10 state a claim under the FCRA. Defendant has established that its collection efforts ceased on May
 11 19, 2011. (Dkt. # 24, ¶ 5, Ex. B.) Defendant has further established that it did not report any
 12 information to the credit reporting agencies and never received any information from those
 13 agencies informing them Plaintiff was disputing information in the credit report. (*Id.* at ¶¶ 12–
 14 13.) Plaintiff has not produced any evidence disputing this evidence or showing a genuine issue
 15 of material fact.

16 *1. FDCPA Claim*

17 Civil claims arising under the FDCPA are subject to a one-year statute of limitations from
 18 the date of the violation. 15 U.S.C. § 1692k(d); *Naas v. Stolman*, 130 F.3d 892, 893 (9th Cir.
 19 1997). Plaintiff's FDCPA claim is based on allegations of harassing and oppressive behavior in
 20 connection with Defendant's collection of the debt. (Dkt. #28.) However, Defendant ceased all
 21 collection activities on May 19, 2011. (Dkt. #24, ¶ 5; Ex. B.) Plaintiff has failed to produce any
 22 evidence disputing that date or showing a genuine issue of material fact with respect to when
 23 Defendant ceased its collection activities. Thus, even assuming Plaintiff's allegations of
 24 harassing and oppressive behavior are true, Plaintiff was required to file this action by May 19,
 25 2012. Plaintiff's complaint was not filed until October 6, 2012. (Doc. #1, Ex. A.) Consequently,
 26 any action for Defendant's violations of the FDCPA is barred by the statute of limitations, and
 27 Defendant is entitled to judgment as a matter of law.

1 2. *FCRA Claim*

2 Defendant also contends the Plaintiff cannot state a claim under the FCRA.² The purpose
 3 of the FCRA is “to protect consumers from the transmission of inaccurate information about them
 4 . . . and to establish credit reporting practices that utilize accurate, relevant, and current
 5 information in a confidential and responsible manner.” *Guimond v. Trans Union Credit*
 6 *Information Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) (citations removed). Although the FCRA’s
 7 requirements primarily apply to credit reporting agencies, it imposes some obligations on parties
 8 using the consumer reports and reporting information to the credit reporting agencies. *See* 15
 9 U.S.C. §§ 1681–1681x. Generally, those obligations are to request consumer reports only for
 10 “permissible purposes,” 15 U.S.C. §§ 1681b, 1681n(a)(1)(B), provide the consumer with certain
 11 information if denying the extension of credit based on information a consumer report, 15 U.S.C.
 12 § 1681m, provide accurate information to the credit reporting agencies, 15 U.S.C. § 1681s-2(a),
 13 and take certain actions after receiving notice from a credit reporting agency that the consumer
 14 has disputed information contained in a report, 15 U.S.C. § 1681-2s(b).

15 Plaintiff cannot state a claim under the FCRA because Defendant has established that
 16 none of the obligations under the FCRA is applicable here. First, even assuming the “soft pull” of
 17 Plaintiff’s credit falls under the purview of the FCRA, “collection of an account of” the consumer
 18 is a “permissible purpose” for requesting a consumer report. 15 U.S.C. § 1681b(a)(3)(A).
 19 Second, Defendant did not deny the extension of credit to Plaintiff, and thus the obligation to
 20 provide the mandated information was not triggered. Third, Defendant has established that it did
 21 not report any information to a credit reporting agency so there can be no liability for
 22 inaccuracies. Finally, Defendant has established that it never received notice of a dispute from a
 23 credit reporting agency and, as such, none of the corresponding obligations was triggered. As

25 2 Defendant initially argues that Plaintiff’s Complaint fails to state a claim because its sole
 26 conclusory allegation that Defendant owes Plaintiff money “for violations of FCRA” is
 27 insufficient under the *Iqbal/Twombly* pleading standard. Although true, it must be remembered
 28 that Plaintiff originally filed the complaint in Nevada small claims court, using the form provided
 in compliance with Rule 89 of Nevada’s Justice Court Rules of Civil Procedure. Defendant may
 not remove a small claims action to federal court, and then seek summary judgment based on the
 fact that the small claims form does not comply with the federal pleading standard.

1 Plaintiff has not provided any evidence showing a genuine issue of material fact with respect to
2 these obligations, Defendant is entitled to judgment as a matter of law.

3 **III. CONCLUSION**

4 IT IS THEREFORE ORDERED that Defendant CCB Credit Services, Inc.'s Motion for
5 Summary Judgment is GRANTED. The Clerk of the Court is instructed to enter judgment in
6 favor of CCB Credit Services, Inc. and to close the case.

7 DATED THIS 14th day of July, 2013.

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9 
10 ANDREW P. GORDON
11 UNITED STATES DISTRICT JUDGE

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